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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

FRED LEIGHTON HOLDING, INC., et al.,

Debtors.

Chapter 11

Case No.: 08-11363 (RDD)
Jointly Administered

**STATEMENT IN RESPONSE TO OBJECTION OF FLHI LIQUIDATION TRUST TO
THE FOURTH AND FINAL APPLICATION OF HERRICK, FEINSTEIN LLP, FOR
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

1. Peter Bacanovic respectfully submits this statement in response to the objection of FLHI Liquidation Trust (the "Trust") to the final fee application of Herrick, Feinstein LLP (the "Objection Motion"), *solely* to address certain allegations made about him therein.

2. The Trust sets forth serious defamatory allegations of malfeasance by Mr. Bacanovic. *See* Objection Motion ¶¶ 21, 31, 146, 175-177. Due to the seriousness of the allegations, and the concern that the proponent is attempting to influence this Court's view of Mr. Bacanovic in connection with his claim against the estate and pending proceedings before this Court, Mr. Bacanovic is compelled to respond.

3. The Trust referenced Mr. Bacanovic's purported participation in the destruction of email. Objection Motion ¶¶ 176-178. This allegation is false. Moreover, when Mr. Bacanovic learned that this allegation had been made in a private letter to the court in 2009 (the topic of which had nothing to do with him), Mr. Bacanovic responded promptly to the parties who made the allegation and learned that no basis for the allegation existed. *See* Correspondence with

Cadwalader demanding that the firm cease and desist from making such allegations and counsel's response identifying Mr. Shull as the source of the allegation (Ex A), and email correspondence with Herrick Feinstein, counsel for the estate for which Mr. Shull was acting, confirming that no such proof exists – indeed Mr. Bacanovic never received a report of the alleged investigation that counsel promised to conduct (Ex B).

4. It appears that the Trust has merely repeated this allegation without reviewing the above-referenced correspondence or confirming the facts. Note that counsel for Mr. Bacanovic wrote to the Trust upon receipt of the Objection Motion and requested a retraction which has not been forthcoming.

5. Furthermore, the Trust continually lumps Mr. Bacanovic together with Ralph Esmerian and other employees and professionals in purportedly acting against the best interests of the estate, particularly with respect to alleged "cost overruns" in the construction budget. *See* Objection Motion at ¶¶ 58, 64, 120, 176. Not only are these allegations false, but, tellingly, are not the subject of any claims made against Mr. Bacanovic in this bankruptcy case.

6. Mr. Bacanovic is the victim of a harassing lawsuit which the estate filed on the heels of Mr. Bacanovic's filing of an unsecured claim for rejection damages.¹ While Mr. Bacanovic sought discovery in that adversary proceeding on allegations made against him in the litigation as well as on the claims referenced above which Mr. Bacanovic believes were included in letters to the Court and reports on which he was never copied, no discovery was ever forthcoming. Instead, the estate offered to settle that lawsuit and Mr. Bacanovic accepted the settlement to avoid the risks and costs of litigation and move on with his life. The accepted

¹ As the Court has noted, his employment agreement apparently was not included on the debtors' schedules for reasons which have never been explained to Mr. Bacanovic by Herrick Feinstein, debtors' counsel.

settlement offer was inexplicably withdrawn on the eve of confirmation of the plan of reorganization. Immediately thereafter, Mr. Bacanovic approached the Trust to address discovery and since December, the parties again have been engaged in finalizing a settlement.

7. False allegations filed in stealth in motions that have nothing to do with the defamed party have no place before this Court. For the foregoing reasons, Mr. Bacanovic respectfully requests that the Court disregard these statements as they relate to him.

Dated: New York, New York
January 19, 2010

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/s/Carren Shulman

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